IN THE HIGH COURT OF GUJARAT AT AHMEDABAD

SPECIAL CIVIL APPLICATION No 17361 of 2003

For Approval and Signature:

HON'BLE MR.JUSTICE D.P.BUCH

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1. Whether Reporters of Local Papers may be allowed to see the judgements? : YES

2. To be referred to the Reporter or not? : NO

3. Whether Their Lordships wish to see the fair copy of the judgement? : NO

4. Whether this case involves a substantial question of law as to the interpretation of the Constitution of India, 1950 of any Order made thereunder? : NO

5. Whether it is to be circulated to the concerned Magistrate/Magistrates,Judge/Judges,Tribunal/Tribunals? : NO

GANPATBHAI CHHANABHAI PATEL

Versus

STATE OF GUJARAT

Appearance:

1. Special Civil Application No. 17361 of 2003

MR UTPAL M PANCHAL for Petitioner No. 1

MS P B SHETH AGP for Respondent No. 1-3

RULE SERVED for Respondent No. 1-3

CORAM : HON'BLE MR.JUSTICE D.P.BUCH

Date of decision: 31/03/2004

ORAL JUDGEMENT

The petitioner above named has preferred this petition under Article 226 of the Constitution of India

for appropriate writ, order or direction, for quashing and setting aside an order dated 11/10/03, passed by respondent no.2 herein, for detaining the petitioner u/s.3(2) of the Gujarat Prevention of Anti-Social Activities Act, 1985 (for short, "the said Act").

2. It was alleged against the petitioner that one prohibition offence was registered against him before Olpad Police Station at C.R.No.689/2003 on 24/08/03 and that two witnesses had given statements against the petitioner saying that the petitioner was involved in certain illegal activities. On the strength of the above registered and unregistered cases, the petitioner was treated as a "bootlegger" and was detained as aforesaid.

3. Feeling aggrieved by the said order of his detention, the petitioner has preferred this petition before this Court. It has been contended that the petitioner was not supplied with copies of statements and that the representation of the petitioner was not decided promptly. That, therefore, the order of his detention is illegal and it is required to be quashed and set aside.

4. On receipt of the petition, Rule was issued and in response to the service of notice of Rule, Ms.P B Sheth learned AGP appeared on behalf of the respondents. I have heard the learned advocates for the parties and have perused the papers.

5. The learned advocate for the petitioner has contended that the detaining authority has considered one registered offence and two statements of witnesses. It has also been contended that the names of the witnesses have not been disclosed to the petitioner, and therefore, the petitioner was deprived of a constitutional right of making an effective representation against his detention.

6. In S.C.A.No.11335/2001 this Court (Hon'ble Mr.Justice A.L. Dave) has held that before exercising powers of privilege u/s.9(2) of the said Act, the detaining authority is required to have credible material before it, in order to find that the name of the witness is required to be kept away from the detenu, with a view to see that the safety of the witness is safeguarded. However, the said decision makes it clear that before exercising the said powers, there must be credible material before it to come to a finding that there was reasonable apprehension or fear in the mind of the witness and therefore, the name was not disclosed.

7. On going through the records, it is found that

there appears to be no material on the basis on which the detaining authority could have come to a finding that there was some reasonable apprehension in the mind of the witnesses, and therefore, their names were not disclosed. Therefore, non-disclosure of the names of witnesses would be violative of the principle of natural justice.

8. So far the prohibition offence is concerned, the learned AGP has relied upon a decision in the case of Kanuji S. Jhala V/s. State of Gujarat reported in 2000 (4) GLR 3256 in order to argue that the sale and supply of prohibition liquor would adversely affect "public health". This decision was considered by this Court (Hon'ble Mr.Justice N.G.Nandi) in S.C.A.No.16542/2003. After considering the above decision, this Court came to a finding that the facts would not lead to a threat to "public health" and consequently, it cannot be said that there was a threat to "public order".

9. In absence of any material leading to a threat to public order or public health, an order of detention could not be passed by the detaining authority. In that view of the matter, the order of detention cannot be sustained in the eye of law and therefore, it is required to be dismissed.

10. For the foregoing reasons, this petition is allowed. The impugned order of detention dated 11/10/03 passed by respondent no.2 against the petitioner, is ordered to be quashed and set aside. Detenu, Ganpatbhai alias Guniyo Chhanabhai Patel, is ordered to be set at liberty forthwith, if no longer required in any other case. Rule is made absolute with no order as to costs. Direct service permitted.

(D. P. Buch, J.)

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